

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES THOMAS,

Petitioner,

vs.

ROBERT K. WONG, Acting Warden,

Respondent.

No. C 09-0733 JSW (PR)

**ORDER OF DISMISSAL**

**(Docket No. 3)**

**INTRODUCTION**

Petitioner, a prisoner of the State of California currently incarcerated at San Quentin State Prison in San Quentin, California, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a finding of guilt in a disciplinary hearing, for which he was subjected to a thirty day loss of good time credit. Respondent now moves to dismiss the petition for lack of habeas jurisdiction, arguing that the claims must be pursued, if at all, in a civil rights action. Petitioner opposes the motion and Respondent has filed a reply. For the reasons discussed below, the court will dismiss the action.

**FACTUAL BACKGROUND**

According to uncontested facts in the motion to dismiss, the petition and the exhibits in support thereof, Petitioner is serving a sentence of fifteen years-to-life plus one year for 1983 convictions from Los Angeles County Superior Court for Second Degree Murder and use of a firearm. Petitioner has long passed his “minimum eligible parole date” (hereinafter “MEPD”).

1           Petitioner was the subject of a disciplinary hearing after a cell search on February  
2   8, 2008, where a random cell search of his cell uncovered cigarette tobacco and a lighter.  
3   After the hearing, at which Petitioner's cellmate apparently took responsibility for the  
4   seized contraband but the officer conducting the search testified that Petitioner attempted  
5   to distract him during the search, Petitioner was found guilty of the charges and suffered  
6   the loss of 30 days of good time credits. As a result of the loss of good time credit,  
7   Petitioner's MEPD was recalculated from October 31, 1992 to December 4, 1992,  
8   another date long in the past. Petitioner challenges the guilty finding on the ground that  
9   he was denied due process and equal protection at his disciplinary hearing.

10           Petitioner sought state habeas relief, which was denied by Marin County Superior  
11   Court, the California Court of Appeal, and the California Supreme Court. The instant  
12   petition was filed on February 18, 2009.

### 13                                   **DISCUSSION**

14           Respondent moves to dismiss, arguing that habeas jurisdiction is lacking because  
15   Petitioner's claim here does not challenge the fact or duration of his confinement.  
16   Respondent asserts that the claims must be pursued in a civil rights complaint under 42  
17   U.S.C. § 1983 rather than in a habeas petition. Petitioner opposes the motion, arguing  
18   that the disciplinary sanction of thirty days credit loss did, in fact, affect the fact or  
19   duration of his confinement. Petitioner does not elaborate on how the sanction that  
20   changed his MEPD on a life sentence to a different date in 1992 would affect the fact or  
21   duration of his confinement.

#### 22           A.   Legal Principles

23           “Federal law opens two main avenues to relief on complaints related to  
24   imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the  
25   Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges  
26   to the lawfulness of confinement or to particulars affecting its duration are the province  
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1 of habeas corpus.’” *Hill v. McDonough*, 547 U.S. 574, 579 (2006) (quoting *Muhammad*  
2 *v. Close*, 540 U.S. 749, 750 (2004)). “An inmate’s challenge to the circumstances of his  
3 confinement, however, may be brought under § 1983.” *Id.*

4 Traditionally, challenges to prison conditions have been cognizable only via a §  
5 1983 civil rights action, while challenges implicating the fact or duration of confinement  
6 must be brought through a habeas petition. *Docken v. Chase*, 393 F.3d 1024, 1026 (9th  
7 Cir. 2004). The two remedies are not always mutually exclusive, however. *Id.* at 1031;  
8 *see also id.* at 1027 n.2. The Supreme Court has consistently held that any claim by a  
9 prisoner attacking the fact or duration of his confinement must be brought under the  
10 habeas sections of Title 28 of the United States Code. *See Calderon v. Ashmus*, 523 U.S.  
11 740, 747 (1998); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Preiser v. Rodriguez*,  
12 411 U.S. 475, 500 (1973). A claim that would necessarily imply the invalidity of a  
13 prisoner’s conviction or continuing confinement must be brought in a habeas petition.  
14 *See id.*

15 Where an inmate challenges the constitutional validity of the state procedures  
16 used to deny parole eligibility or parole suitability, but seeks injunctive relief in the form  
17 of an earlier eligibility review or parole hearing rather than earlier release, the claim is  
18 cognizable under § 1983. *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). In *Wilkinson*,  
19 the Court held that prisoners’ parole claims seeking a new parole hearing need not be  
20 brought in habeas corpus because the relief sought would not necessarily “invalidate the  
21 duration of their confinement—either *directly* through an injunction compelling speedier  
22 release or *indirectly* through a judicial determination that necessarily implies the  
23 unlawfulness of the State’s custody.” *Id.* at 79 (finding that the exception to § 1983  
24 coverage for claims at the core of habeas corpus relief in *Preiser* does not include  
25 procedural challenges where relief under § 1983 was left available by the Court’s  
26 subsequent holding in *Wolff v. McDonald*, 418 U.S. 539, 554 (1974)). *See also Neal v.*  
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1 *Shimoda*, 131 F.3d 818, 824 (9th Cir. 1997) (if prisoner wins and is entitled to parole  
2 eligibility hearing, this does not guarantee parole or necessarily shorten his prison  
3 sentence).

4 However, a parole or time credit claim that does affect the legality or duration of a  
5 prisoner's custody, and a determination of which may likely result in entitlement to an  
6 earlier release, must be brought in habeas. *See Butterfield v. Bail*, 120 F.3d 1023, 1024  
7 (9th Cir. 1997); *Young v. Kenny*, 907 F.2d 874, 876-78 (9th Cir. 1990), *cert. denied*, 498  
8 U.S. 1126 (1991); *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989); *see also*  
9 *Ramirez v. Galaza*, 334 F.3d 850, 858-59 (9th Cir. 2003) (implying that claim, which if  
10 successful would “necessarily” or “likely” accelerate the prisoner’s release on parole,  
11 must be brought in a habeas petition).

12 The Supreme Court has declined to address whether a challenge to a condition of  
13 confinement may be brought under habeas. *See Bell v. Wolfish*, 441 U.S. 520, 526 n.6  
14 (1979); *Fierro v. Gomez*, 77 F.3d 301, 304 n.2 (9th Cir.), *vacated on other grounds*, 519  
15 U.S. 918 (1996). However, the Ninth Circuit has held that “habeas jurisdiction is absent,  
16 and a § 1983 action proper, where a successful challenge to a prison condition will not  
17 necessarily shorten the prisoner’s sentence.” *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th  
18 Cir. 2003).

19 The preferred practice in the Ninth Circuit also has been that challenges to  
20 conditions of confinement should be brought in a civil rights complaint. *See Badea v.*  
21 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of  
22 challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1  
23 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms  
24 and conditions of confinement must be brought in civil rights complaint).

25 The Ninth Circuit has permitted habeas to be used to assert claims that are “likely  
26 to accelerate” eligibility for parole, even though success in such cases would not  
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1 necessarily implicate the fact or duration of confinement. *Docken*, 393 F.3d at 1028  
2 (citing *Bostic v. Carlson*, 884 F.2d 1267 (9th Cir. 1989), and *Ramirez v. Galaza*, 334  
3 F.3d 850, 858 (9th Cir. 2003), *cert. denied*, 541 U.S. 1063 (2004)). The actual holding in  
4 *Docken* is narrow and establishes that “when prison inmates seek only equitable relief in  
5 *challenging aspects of their parole review* that, so long as they prevail, *could* potentially  
6 affect the duration of their confinement, such relief is available under the federal habeas  
7 statute.” *Docken*, 393 F.3d at 1031 (emphasis added).

8 In *Ramirez v. Galaza*, 334 F.3d at 859, the Ninth Circuit held that “habeas  
9 jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a  
10 prison condition will not necessarily shorten the prisoner's sentence.” In *Ramirez*, the  
11 district court had dismissed a prisoner's § 1983 complaint challenging disciplinary  
12 decisions as barred by *Heck* because the prisoner had not yet had the disciplinary  
13 sentence invalidated. *Ramirez*, 334 F.3d at 853. The appellate court reversed,  
14 concluding that the plaintiff could challenge the decision under § 1983 because the *Heck*  
15 “rule does not apply to § 1983 suits challenging a disciplinary hearing or administrative  
16 sanction that does not affect the overall length of the prisoner's confinement.” *Id.* at 858.

17 The case that most suggests a claim such as Petitioner's can be brought in habeas  
18 is *Docken*, but even that case is distinguishable because its holding was limited to cases  
19 in which “inmates seek only equitable relief in challenging aspects of their parole  
20 review.” *Docken*, 393 F.3d at 1031. Petitioner does not challenge some aspect of his  
21 parole review, but instead his challenge is more like that of the plaintiff in *Ramirez*, in  
22 that he is challenging a disciplinary decision that will not necessarily shorten the  
23 sentence and therefore should be pursued in a § 1983 action because habeas jurisdiction  
24 is absent.

25 B. Analysis

26 The question here is whether Petitioner's claim inevitably affects the fact or  
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1 length of Petitioner's confinement. Upon being found guilty on the CDC-115, Petitioner  
2 was assessed 30 days of good time credits. If Petitioner was in prison on a term of years,  
3 such a penalty would inevitably affect the duration of his confinement by making it 30  
4 days longer than it otherwise would be. However, Petitioner is serving an indeterminate  
5 life sentence and is 27 years into his 16 years-to-life sentence. Neither Respondent nor  
6 Petitioner has identified any way in which those 30 days of credits matter at this point in  
7 his sentence. They cannot extend his maximum term of life in prison, nor can they  
8 extend his minimum term, as that was 16 years and is now long in the past. In fact, the  
9 only change alleged with regard to Petitioner's term of confinement here is that his  
10 MEPD was recalculated to a different day in 1992.

11 As such, this Court finds that the time credit forfeiture imposed on Petitioner as a  
12 result of his disciplinary proceeding did not inevitably affect the duration of his sentence.  
13 The decision led to the forfeiture of time credits, but that forfeiture will not inevitably  
14 affect the duration of confinement for this indeterminate-sentenced inmate who is long  
15 past his minimum parole date. The Court concludes that habeas jurisdiction is absent  
16 here and this action must be dismissed.

17 Although a district court may construe a habeas petition by a prisoner attacking  
18 the conditions of his confinement or some other condition that he contends violates his  
19 constitutional rights as pleading civil rights claims under 42 U.S.C. § 1983, *see*  
20 *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971), the Court declines to do so here. The  
21 difficulty with construing a habeas petition as a civil rights complaint is that the two  
22 forms used by most prisoners request different information and much of the information  
23 necessary for a civil rights complaint is not included in the habeas petition filed here.  
24 Additionally, there is doubt whether Petitioner is willing to pay the civil action filing fee  
25 of \$350.00 rather than the \$5.00 habeas filing fee to pursue his claims. It is not in the  
26 interest of judicial economy to allow prisoners to file civil rights actions on habeas forms  
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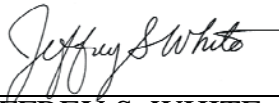
1 because virtually every such case, including this one, will be defective at the outset and  
2 require additional court resources to deal with the problems created by the different filing  
3 fees and the absence of information on the habeas form.

4 **CONCLUSION**

5 For the foregoing reasons, respondent's motion to dismiss is GRANTED (docket  
6 no. 3). This action is DISMISSED for failure to state a claim upon which relief may be  
7 granted without prejudice to Petitioner's bringing his claim under 42 U.S.C. § 1983. The  
8 Clerk shall close the file and enter judgment in accordance with this order.

9 IT IS SO ORDERED.

10 DATED: March 26, 2010

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JEFFREY S. WHITE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES THOMAS,

Plaintiff,

v.

ROBERT K. WONG et al,

Defendant.

Case Number: CV09-00733 JSW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 26, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Thomas  
C70569  
CSP-San Quentin  
San Quentin, CA 94974

Dated: March 26, 2010



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk